



September 26, 2001

Mr. Joe Jackson
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2001-4315

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152430.

The City of College Station Police Department (the "department") received a request for information relating to a named police officer. You indicate that some of the responsive information is being made available to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have already redacted some information from the submitted documents under section 552.117(2) of the Government Code in reliance upon Open Records Decision No. 670 (2001). Under section 552.117(2), a governmental body must withhold from public disclosure information that reveals peace officers' home addresses, home telephone numbers, social security numbers, and whether the peace officers have family members. In Open Records Decision No. 670 (2001), this office determined that a governmental body can withhold a peace officer's home address, home telephone number, social security number, and family member information under section 552.117(2) without the necessity of requesting a decision from the attorney general's office. Consequently, you have already redacted information under section 552.117(2). We note that the submitted documents contain additional personal information protected under section 552.117(2) that you have not redacted. We have marked this information, which you must withhold.

Next, you contend that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common

law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). You indicate that portions of the submitted documents, including two "rap sheets," consist of criminal history information compiled by the department. Based on your argument and our review of the information, we agree that some of the submitted information consists of criminal history record information that is confidential under common law privacy. We have marked this information, which must be withheld under section 552.101.

This office has also concluded that some kinds of medical information or information indicating disabilities or specific illnesses is considered intimate and embarrassing. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked other information in the submitted documents that is confidential under common law privacy and therefore must be withheld under section 552.101.

We also note that the submitted documents contain a social security number that is not excepted from disclosure under section 552.117(2). A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number information, which we have marked, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you contend that portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Consequently, you must withhold the Texas driver's license number information contained in the submitted documents, which we have marked, under section 552.130.

In summary, you must withhold peace officers' home address, home telephone number, social security number, and family member information under section 552.117(2). You must withhold the marked criminal history record information under section 552.101 in conjunction with common law privacy. You must likewise withhold medical information under section 552.101 in conjunction with common law privacy. You must withhold the social security number that is not otherwise protected under section 552.117(2) under section 552.101 if the number was obtained or maintained by the department pursuant to a provision of law enacted on or after October 1, 1990. Finally, you must withhold the Texas driver's license information contained in the submitted documents. You must release the remainder of the submitted information.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

¹You request that this office issue a "previous determination" allowing cities to withhold Texas driver's license number and "rap sheets" without requesting a decision from this office. See Open Records Decision No. 673 (2001). We decline to issue such a ruling at this time.

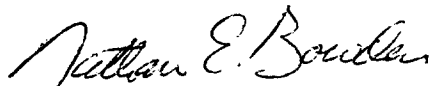
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 152430

Enc: Submitted documents

c: Mr. Jim W. James
P.O. Box 1146
Bryan, Texas 77806
(w/o enclosures)